

SERVICE DATE - JUNE 21, 2000

This decision will be included in the bound volumes of the STB printed reports at a later date.

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC.,
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
— CONTROL AND OPERATING LEASES/AGREEMENTS —
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

Decision No. 160

Decided: June 19, 2000

Environmental Condition No. 8(A) of Appendix Q of Decision No. 89¹ (Decision No. 89, slip op. at 393-94), requires Applicants, in order to address potential safety impacts at highway/rail at-grade crossings, to upgrade existing warning devices at 86 public highway/rail at-grade crossings listed in the decision. Environmental Condition No. 8(A) further provides that: “To the extent practicable, Applicants shall prioritize for improvement those highway/rail at-grade crossings that have the greatest level of projected train traffic increases. If Applicants execute a Negotiated Agreement with the affected local jurisdiction and the state department of transportation, they may implement alternate safety improvements in the vicinity of these identified highway/rail at-grade crossings that achieve at least an equivalent level of safety enhancement. Applicants shall complete these upgrades or improvements within 2 years of the effective date of the Board’s decision, and shall certify to the Board such completion on a quarterly basis during this 2-year period.”

On April 20, 2000, NS submitted a signed Negotiated Agreement, Draft of August 16, 1999, with the Indiana Department of Transportation (INDOT), which was approved by INDOT on September 15, 1999, regarding a highway/rail at-grade crossing improvement project in Indiana. NS states that this Negotiated Agreement provides that flashing lights with gates, bells, and track circuit upgrades be installed at the NS grade crossing at Anthony Boulevard in Allen County, Fort Wayne, IN. Subsequently, NS advises, the Railroad Section of the Office of Intermodal Transportation of INDOT issued an order, dated September 20, 1999, requiring NS to comply with the terms of the Negotiated Agreement for the installation of flashing light signals

¹ In Decision No. 89, served July 23, 1998, we approved, subject to certain conditions, including environmental mitigation conditions, the acquisition of control of Conrail Inc., and Consolidated Rail Corporation (collectively, Conrail) and the division of Conrail’s assets by CSX Corporation and CSX Transportation, Inc. (collectively, CSX), and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, NS). CSX and NS are referred to as Applicants.

with gates and bells, and upgrade the track circuits at Anthony Boulevard, Allen County, Fort Wayne, IN, AAR-DOT 478 226 J, Project No. STP-F016 (011).²

As pertinent here, Environmental Condition No. 8(A) specifically required that NS install “4-Quadrant Gates, or Alternative Mitigation such as Median Barriers” at the Anthony Boulevard grade crossing. NS advises that, in accordance with Environmental Condition No. 8(A), INDOT and NS agreed that the Anthony Boulevard grade crossing was not conducive to the installation and operation of either 4-quadrant gates or median barriers, due to the physical layout of the highway/railroad intersection, a nearby highway intersection, and vehicular traffic patterns. NS and INDOT agreed to an alternative package of grade crossing safety enhancements for the Anthony Boulevard crossing, including: (1) installation of additional 12" flashing lights on a separate mast in the southwest quadrant of the grade crossing; (2) replacement of the existing 8" flashing lights with 12" flashing lights; (3) extension of the gate tips to approximately 26', such that the tips will extend beyond the centerline of the roadway; and (4) installation of the most recently upgraded constant warning time circuitry.

According to NS, the Negotiated Agreement effectuates the Board’s preference for privately negotiated solutions stated in Decision No. 89, slip op. at 153. In view of the Negotiated Agreement with INDOT, NS requests that Environmental Condition No. 8(A) of Appendix Q of Decision No. 89 be amended by deleting the reference to the installation of “4-Quadrant Gates, or Alternative Mitigation such as Median Barriers” at the Anthony Boulevard grade crossing in Allen County, Fort Wayne, IN, and that Environmental Condition No. 51 of Appendix Q of Decision No. 89 be amended by adding the Negotiated Agreement and the September 20, 1999 Railroad Section Order of the Office of Intermodal Transportation of INDOT to the list of Negotiated Agreements entered into by NS. Environmental Condition No. 51 requires NS to comply with the terms of all Negotiated Agreements developed with states, local communities, and other entities regarding environmental issues associated with the Conrail transaction. See Decision No. 89, slip op. at 420-21. INDOT concurs with the request.

Given the physical layout of the Anthony Boulevard grade crossing, and the parties’ determination that this makes the mitigation in Environmental Condition No. 8(A) inappropriate for that particular grade crossing, NS’ request will be granted. Accordingly, we will: (1) add the Negotiated Agreement between NS and INDOT and the September 20, 1999 Railroad Section Order of the Office of Intermodal Transportation of INDOT to Environmental Condition No. 51 of Appendix Q of Decision No. 89, and (2) delete the reference to the installation of “4-Quadrant Gates, or Alternative Mitigation such as Median Barriers” at the Anthony Boulevard grade

² NS enclosed a copy of the Railroad Section Order signed by Ron Thomas, Section Manager, as well as a letter dated September 17, 1999, from Larry J. Shaw, P.E., Rail Projects Manager, INDOT, authorizing NS, effective September 17, 1999, to purchase the necessary materials and proceed with the work set out in the Negotiated Agreement.

crossing in Allen County, Fort Wayne, IN, from Environmental Condition No. 8(A) of Appendix Q of Decision No. 89, because the application of that particular condition to this crossing has been superseded by the parties' Negotiated Agreement.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. In accordance with the Negotiated Agreement between NS and INDOT, Draft of August 16, 1999, and approved by INDOT on September 15, 1999, the following is added to the NS Subsection of Environmental Condition No. 51 of Appendix Q of Decision No. 89:

**17. Indiana Department of Transportation Negotiated Agreement,
Draft of August 16, 1999, approved by INDOT on September 15,
1999, and a Railroad Section Order of the Office of Intermodal
Transportation of INDOT, dated September 20, 1999.**

3. In addition, Environmental Condition No. 8(A) of Appendix Q of Decision No. 89 is amended to delete the reference to the installation of "4-Quadrant Gates, or Alternative Mitigation such as Median Barriers" at the Anthony Boulevard grade crossing in Allen County, Fort Wayne, IN, because the application of that condition to this particular crossing has been superseded by the parties' Negotiated Agreement.

4. This decision is effective on the date of service.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams
Secretary